O/Tenancy/46

1946

File No.

Legal Department

A **BRANCH**

P-10
B

Subject:

Opinions under the

Bombay Tenancy Act 1939

O/Tenancy/46

File No.

224-A

Gen. 191 e.

C O N T E N T S.

Legal Department File O. Tenancy/46

Serial No.	R.I./O.No.	Subject	Page
1	2	3	4
1)	O.No. 1468/21-2-46	Bombay Tenancy Act, 1939- Circular re-transfer of cases- Whether the instruction contained in the circular are legally in order.	1-2
2)	O.No. 7048/17-10-46	See7- Whether the Vendee who purchases land from L/Lord can eivct the old tenant.	3
3)	O.No. 9376/23-12-46	Whether the Act applies to villages in the B.S.D. which are now included in Gr. B'bay.	5
4)	O.No. 9636/30-12-46	See 15- Fixation of rent payable by tenants for lands.	7-8
5)	O.No. 240/9-1-47	See 23(1)(b)- Termination of leave on a minor's attaining majority.	9-10

SMR 9-7-56
5 Copies.

PHS 4/8

NGA 4/8

L.D.R.I.No. 788.
28-1-1946.

Submitted.

This is a reference from the Revenue Department That department is issuing a circular in connection with the administration of the Bombay Tenancy Act, 1939. The circular is at pp. 11-14 ante and it is being shown to R.L.A. before issue. No specific points have been raised for R.L.A.'s consideration (vide Secy. R.D's note dated 14-9-45 at pp. 7-8 ante); but it is presumed that the R.D. wants R.L.A. to see whether the instructions contained in the circular are legally in order.

The only point that need be considered in connection with the circular is the one about the instructions to the Mamlatdars contained in para 3 of the circular regarding transfer of cases under S. 349 of the Criminal Procedure Code(vide A-A on p. 14 ante) These instructions appear to be legally in order, such transfers being permissible under S. 349. Criminal Procedure Code. There is no other point in the circular which will require examination from the legal point of view, rest of the circular deals with purely administrative matters. If approved the papers may be seen and returned.

It may be pointed out here that the U.S., R.D. had raised one question in para 2 of his note dated 12-9-45 for R.L.A.'s consideration, but final order regarding that matter appear to have been passed in Secy. R.D.'s note dated 14-9-45, para 2(p.7 ante). So, that point is not examined.

Id./.... 31/1
A.A.S.

Reply may be----

Seen and returned.

The draft circular at pp. 11-14 ante is in order.

A.L.R. Id./... 6/2

A.L.R. Id./... 6/

Resubmitted.

As regards the opinion which R.L.A. has in view pertaining to the interpretation of provisions of Sections 20 and 24 of the Bombay Tenancy Act, 1939, attention is invited to Mr. Halliday's note dated 5 3-43 underlying R.L.A.'s opinion No. 1808 dated 12-3-43. pp. 45-46 of L.D.Compl O.Tenancy of 1939-43.

2. As regards the latter part of para 4 of the draft circular, it may be stated that it appears to be quite consistent with the provisions of section 20 of the Bombay Tenancy Act, 1939.

Reply may be —

"Seen and returned.

The draft Circular at pp. 11-14 ante, as slightly amended, is in order.".

Id./.....7/2 A.L.R. Id./.... 8/2

R.L.A. Id./P.N.M. 11/2/46

U.O.R. to R.D.No. 1468 dt. 21-2-46.

SMR 9-7-56
4 Copies.

L.D. R.I.No. 8946 dt. 14-10-1946.

Submitted.

Please see Secy. R.D.'s note at p. 7 ante. The questions for consideration of the R.L.A. are as follows:

1 Whether the Vendee who purchases land from a Landlord can evict the old tenant on the plea that the land is required for his self cultivation; &

2 Whether a tenant will be within his rights if he pays one-third crop share in case of dry crop and one-fourth in case of irrigated crop for the year 1946-47

Secretary R.D., has examined these two questions in his note at .7 and the view taken by him is correct. The first question is fully covered by the provisions of S.7 of the Bombay Tenancy Act, 1939(as substituted by the proposed Bombay Tenancy (Amendment) Act, 1946) and needs little nothing. As regards the second question also S.15(as will be amended by the proposed Bombay Tenancy (Amendment) Act, 1946) leaves no doubt. The Amendment Act will come into force on issue of the notification and after its coming into force, rent cannot exceed in case of irrigated lands one-fourth of the crop-share and in case of any other lands one-third of the crop share, any agreement, usage, decree or order of court notwithstanding(vide sub-section 2 of S.15). The position stated in para 3 of Secretary R.D.'s note is hence correct.

The view taken by Revenue Secretary on both the questions is correct.

Id./..... 15/10

A.A.L.R. I agree Reply may be as at A

Id./... 15/10

R.L.R. Sd./..... 16/10-46

U.O.R. to R.D.No. 7048 dt. 17-10-46.

SMR 9-7-56
4 Copies.

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the Bombay Tenancy Act, 1939 applies to the villages in the Bombay Suburban District which are now included in Greater Bombay.

The Bombay Tenancy Act, 1939 can be extended to the whole of the Province of Bombay except the City of Bombay (see section 1 of the Act). "City of Bombay" as defined in section 3(10) of the Bombay General Clauses Act, 1904 shall mean the area within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature immediately before the date on which the Greater B'bay Laws and the Bombay High Court(Declaration of Limits)Act 1945 came into force. The villages of the B'bay Suburban District, though included in Greater Bombay do not form part of "City of Bombay", Since the Bombay Tenancy Act has been applied to the whole of the Province of Bombay except the City of Bombay, that Act would automatically be deemed to have been applied to the villages in the Bombay Suburban District which are included in Greater B'bay Section 8 of the Greater Bombay Laws and the Bombay High Court(Declaration of Limits)Act, 1945, which applies to Central Acts has no application to the present case. The view taken by Secretary, R.D. is not correct.

Id./.....

Remembrancer of Legal Affairs.

U.R. to R.D.No. 9376,dated the 23rd December 1946.

SMR 9-7-56
4 Copies.

Office of the R.L.A.

Section 15 of the Bombay Tenancy Act, 1939 as, amended by Bombay Act XXVI of 1946 provides:-

(1) "The Provincial Government may from time to time by notification in the Official Gazette fix the maximum rate of rent payable by tenants for lands situated in such areas as may be specified in the notifications

Provided that the maximum rate of rent shall not exceed in the case of irrigated lands one-fourth, and in the case of other lands, one-third of the crop or its value determined in the prescribed manner.

(2) Notwithstanding any agreement usage, decree or order of a Court, a landlord shall not be entitled to recover rent from any tenant for any land in any such area exceeding the rate fixed for such land in such area in such notification.

(3) ....

The proviso to sub-section (1) was inserted by the Bombay Act XXVI of 1946 which came into force with effect from 8-11-1946 and the Notification fixing the maximum rent payable by tenants was issued by Government on 23.11.1946. It appears that some of the landlords have accepted rents for the current year prior to 8.11.1946 and in some of these cases the rents received are inexcess of the maximum prescribed under the proviso to section 15(1). The question for the consideration of the R.L.A.is whether the excess over the prescribed maximum paid by tenants is recoverable.

Section 72 of the Indian Contract Act provides that aperson to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return. In these cases no over payment of rent was made by mistake or under coercion. Consequently section 72 of the Indian Contract Act will have no application and no refund of the excess over the prescribed maximum paid by the tenants can be claimed. Furthe

"every statute, which takes away the vested rights acquired

under existing laws or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past must be presumed, out of respect to the legislature, to be intended not to have retrospective operation" (See Maxwell, p.190). The consideration for the leases in these cases was paid by the tenants long before the proviso to section 15(1) of the Bombay Tenancy Act, 1939 came into operation and consequently that provision cannot be construed as having retrospective effect. The rent paid in advance cannot be considered as intended to be adjustable according to the provisions of law to be passed in future not even contemplated at the time of payment for, payment in satisfaction of dues, though not ripe for recovery, would be a valid discharge of liability. The view taken in R.D. office note at p. 25 ante is not correct.

Id./.....

Remembrancer of Legal Affairs.

U.R. to R.D.No. 9536, dated the 30th December 1946.

SMR 9-7-56
4 Copies.

L.D.R.I.No. 10370
dated 19-11 1946.

Submitted.

2 Please see notes underlying R.L.A.'s opinion No. 5648, dated the 14th August 1946 approving R.D. view expressed in paras. 1 and 2 of R.D. note at p. 7 ante. In accordance with this opinion Government informed all the Collrs. by its circular letter No. 1140/45-27360-F, dated the 6th November 1946(1) that agricultural lands held on lease from the Court of Wards cannot be held tohave been taken on lease from the Crown and accordingly such leases are not exempted under section 25 of the Bombay Tenancy Act 1939 from the operation of the provisions of that Act and (2) that as the Bombay Tenancy Act came into force on 11-4-1946 the leases made prior to this date do not fall within the purview of section 23 but in view of clause (b) of section 23(1) as amended by the Bombay Tenancy(Amendment) Act, 1946 the existing and future leases should be deemed to be for a period of 10m years from the date of the commencement. The Collr, of Panch Mahals has also raised a similar question in his letter at p. 13 ante. The Commr., N.D. while forwarding this states that leases entered into by the guardians of minors should be terminable on a minor's attaining majority and that the lands under management should be exempted from the provisions of section 25 of the Bombay Tenancy Act by amendment in the Act. R.D. states that the question raised was discussed in the Legislature and it was not consider d necessary totake up such amendments for two reasons, namely,(i) that if the tenant is a protected one, the minor can terminate the tenancy under section 7(1) if he wants the land for personal cultivation and (ii) that if the tenant is at present a ten years' tenant the guardians of the minor may get the tenant registered as a protected tenant under section 3A so that the minor can get the benefit of section 7(1). U.S.,R.D. states that the Commr's attention may be invited to the orders issued in Government letter dated

p.11 ante

6-11-1946 since the question of amending the Act or terminating leases do not require further reconsideration. The papers are shown to L.D.

3 U.S.,R.D. has not raised any specific question in this file. But the view expressed in Government letter dated 6-11-1946 appears to be correct. This letter covers the point raise by the Co.lr. of Panch Mahals. It is also true that if the tenant is a protected tenant within the meaning of section 3, 3A and 4 the minor can terminate the tenancy under section 7(1) if he wants the land for personal cultivation or for any non-agricul-tural purpose. Under section 23(1)(b) every ~~lease~~ lease subsisting on the date of the coming into force of the Act or made after this date in respect of any land in such area is deemed to be for a period of not less than 10years. A lease for less than 10 years will therefore under this section be treated as one for 10 years. Such a tenant after expiry of one year from the date of the coming into force of the Bombay Tenancy(Amendment)Act, 1946 will be a protected tenant under section 3A; and the guardian of the minor can take the benefit of section 7(1) if he wants the land for personal cultivation. The view taken by R.D. office appears to be correct, and the papers may be "seen and returned".

Sd./..... 2/1/47
A.L.R.

I agree
Id./.... 3/1 R&L.A.

Id./.....

U.R. to R.D. No. 240, dt. 9-9-47

SMR 9-7-56
4 Copies.